

Appearing Before The Career Service Commission



As a career service employee, you have exercised your right to file an appeal with the Career Service Commission. This presentation is intended to assist you in preparing for that process. It is not intended as legal advice and any legal questions you have should be directed to your own attorney.



Who are the people involved in
the process?



The Commission

The Career Service Commission is made up of five members appointed by the governor. Generally, they are not lawyers. They serve in a very part time capacity as a means of resolving disputes between career service employees and state agencies. Their function is to conduct a hearing to determine if good cause exists for the action(s) taken by the agency.



You

As the person filing the appeal with the Commission, you are referred to as either an “appellant” or “grievant”.



The Hearing Officer

In most cases, the Commission will appoint an attorney as their hearing officer. The hearing officer will serve as their legal advisor, ruling on questions of law, the admissibility of evidence and objections and will draft any legal documents needed at the conclusion of the hearing. The hearing officer does not have a vote on any commission decisions.



The Court Reporter

In most cases, a court reporter will be present to prepare a transcript of the hearing. The transcripts are available in the event an appeal is made to Circuit Court. The reporter records all the discussion during the hearing. Therefore, it is important that all participants speak clearly and that only one person talks at a time. The reporter may ask a participant to repeat a statement so that he or she can ensure the accuracy of the record.



The Agency

The agency involved in the dispute will generally be represented by a staff person and an attorney. The agency attorney will present the case for the agency and question you and your witnesses.

Witnesses

Each side is entitled to call witnesses. Witnesses will be asked questions in the following order:

- By the party calling them (called “direct”);
- By the opposing party (called “cross examination”);
- Follow-up questions by the party calling the witness (called “redirect”); and
- Follow-up questions by the opposing party (called “re-cross”).



Sequestered Witnesses

Witnesses may be “sequestered” which means that they cannot be in the hearing room before they testify. This is to avoid the possibility that witnesses may modify their testimony based on a prior witness’ testimony. As the “appellant,” you and the agency staff representative may be present throughout the hearing even if they plan to testify.



The Public

Since a career service hearing is an open hearing, the public and the media may also be in attendance.



The Procedure



PRE-HEARING PROCEDURE

A pre trial hearing is usually scheduled and conducted by the hearing officer prior to the commission hearing. The purpose of the hearing is to review the list of witnesses that each party will call, the exhibits they will present and any legal issues that might arise. The pre trial hearing is often held by telephone. The hearing is held so that:

- Parties will not be surprised by last-minute rulings.
- The parties can focus on the important issues.
- The Commission can remain an unbiased fact-finder. Pre-hearing matters could potentially prejudice the Commission's decision.



PROCEDURE FOLLOWED AT THE HEARING



Opening Statements

You will be asked to make a brief statement about what you intend to prove at the hearing. Your statement should summarize your case. Do not go into detail at this point--you will present detailed evidence at the next step.



Presentation of Evidence:

- Here is where you have the opportunity to present your case. You should use this time to enter documents which tend to prove your side of the issue. All evidence must be relevant to the grievance. Please have at least **9 COLLATED COPIES OF EACH DOCUMENT** ready to present to the Commission. You do not have to read the documents to the Commission. You should, however, call attention to specific parts of the documents you feel are important.
- You may call witnesses at this time. Everything you have to say about your grievance should be presented at this time. You may not be given another chance to introduce evidence. The agency will also be given the opportunity to present evidence.



Summation

You will be called to offer a summation. No new evidence can be presented at this time. Your summation should show how the evidence that has been presented proves your side of the question. The agency will be allowed to sum up its defense. Once the summations are done, the hearing is over.



Commission's Decision

The Commission members may make a decision on the grievance immediately following the hearing or they may choose to make the decision at a later date.

Typically, a written record of the decision will be made. The written record may include Findings of Fact (listing critical points made at the hearing which lead to the decision), Conclusions of Law (addressing each point of the grievance and indicating whether the agency acted correctly in each case), and a "Decision" (a short statement listing the outcome of the grievance).



Appeal

If either party is not satisfied with the decision of the Commission, they may appeal to circuit court. Because appeals to circuit court can be very complex you should consider consulting with an attorney even if you previously appeared without one. If you intend to appeal, you should carefully review and follow all applicable laws including SDCL Ch. 1-26. If a party is not satisfied with the decision of the circuit court, the next step is an appeal to the South Dakota Supreme Court.



Miscellaneous



The Commission requests that you please arrive at least **15 minutes prior to the scheduled hearing time** in order to take care of any preliminary matters before the hearing.



Failure to Appear

If you fail to appear in person or by counsel, the Commission may dismiss your grievance, which means that absent some legal authority to the contrary, you will automatically lose your case. Please contact the Bureau of Personnel immediately if you believe that you will be unable to attend the hearing.



EX PARTE COMMUNICATIONS

You may not communicate directly or indirectly with members of the Commission or the hearing examiner regarding your grievance unless the opposing side is present or copied on written correspondence. These prohibited conversations are called ex parte (without the other party) communications, and are not allowed.



Rescheduling

If a party requests a different hearing date than the one originally scheduled, the Commission has the right to review the reasons for the request and make a decision whether or not to grant the request.

Other Sources of Information

Employee grievances and commission hearings are governed by SDCL Chs. 3-6A and 1-26, South Dakota Administrative Rules (ARSD) Art. 55:01, and agency policies and procedures. You may want to consider reviewing these sources of information in preparation for your hearing.

